TITLE 41—PUBLIC CONTRACTS

Chap.		Sec.
8.	Federal Grants and Cooperative Agreements [New]	501
9.	Contract Disputes [New]	601

CHAPTER 1—GENERAL PROVISIONS

§ 5. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; application to Government sales and contracts to sell and to Government corporations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5a, 6a, 6a–1, 6b, 252, 260 of this title; title 2 sections 72a, 135a, 475, 604; title 5 sections 3109, 4105, 8709, 8714a, 8902; title 7 sections 87e–1, 427i, 1624; title 8 sections 1252, 1355; title 10 section 2314; title 12 sections 1141b, 1701z–2, 1703, 1710, 1713, 1739, 1747g, 1747k, 1749a, 1750c, 1788, 1827; title 15 sections 634, 2218, 2507, 2609, 2626; title 16 sections 17b, 17i, 343b, 450jj–1, 504, 580c, 590z–3, 594–5, 757, 916*l*, 961, 1052, 2104; title 18 section 4255; title 20 sections 1034, 1070d–1, 2012, 2106; title 21 section 872; title 22 sections 272a, 280b, 280i, 280k, 287e, 287r, 289c, 290b, 295b, 1047, 2103, 2179, 2509; title 23 sections 140, 307; title 24 sections 322, 324; title 28 sections 604, 624, 753; title 29 section 671; title 30 section 556; title 31 section 866; title 33 sections 1123, 1254, 1705; title 38 sections 766, 806, 1820, 4101, 4202, 5012, 5070; title 40 sections 71a, 276a–7, 484, 609, 758; title 42 sections 242k, 242m, 263d, 282, 285, 287b, 289*l*–6, 292*f*, 295f–4, 295g–9, 295g–10, 296k, 300c–11, 300c–21, 300c–22, 300d–5, 300e–2, 300e–3, 300u, 1395u, 1532, 1543, 1563, 1592d, 1592h, 1870, 2051, 2061, 2063, 2075, 2096, 2210, 2293, 2295, 2310, 2349, 2362, 3211, 3535, 4081, 4082, 4101, 4372, 4585, 6009, 6616, 7403, 7404; title 43 section 1817; title 45 sections 361, 712, 719; title 46 section 1126; title 48 sections 1409b, 1409f, 1409j; title 49 sections 1159, 1638, 1643, 1903, 10364, 10385, 10721; title 50 sections 98b, 198; title 50 App. section 1918.

§ 10a. American materials required for public use

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10b, 10c, 10d, 42 of this title; title 15 section 2507; title 50 section 98b.

§ 10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10c, 10d, 42 of this title; title 15 section 2507; title 50 section 98b.

§ 10c. Definition of terms used in sections 10a and 10b

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 42 of this title; title 15 section 2507; title 50 section 98b.

§ 15. Transfers of contracts; assignments of claims; set-off against assignee

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§ 35. Contracts for materials, etc., exceeding $10,000; representations and stipulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 37, 38, 39, 40, 41, 42, 43, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 15 section 637; title 39 section 410.

§ 41. "Person" defined in Walsh-Healey provisions

Whenever used in sections 35 to 45 of this title, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(As amended Nov. 6, 1978, Pub. L. 95–598, title III, § 326, 92 Stat. 2679.)

AMENDMENTS

1978—Pub. L. 95–598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 4—PROCUREMENT PROCEDURES

SUBCHAPTER IV—PROCUREMENT PROVISIONS

§ 251. Declaration of purpose of this subchapter

PROHIBITION AGAINST INFLATIONARY PROCUREMENT POLICIES

For provisions relating to the encouragement of noninflationary pay and price behavior by private industry and labor, and to provide for procurement by executive agencies and military departments of personal property and services at noninflationary prices and wage rates, see Ex. Ord. No. 12092, Nov. 1, 1978, 43 F.R. 51375, set out as a note under section 401 of this title.

§ 252. Purchases and contracts for property

CROSS REFERENCES

Small business concerns, availability of information, see section 637b of Title 15, Commerce and Trade.

CHAPTER 6—SERVICE CONTRACT LABOR STANDARDS

§ 351. Required contract provisions; minimum wages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 352, 353, 357, 358 of this title.

CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

Sec.
405a. Uniform Federal procurement regulations and procedures [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 601, 607 of this title; title 40 sections 474, 481, 487.

§ 401. Congressional declaration of policy

EX. ORD. NO. 12073. FEDERAL PROCUREMENT IN LABOR SURPLUS AREAS

Ex. Ord. No. 12073, Aug. 16, 1978, 43 F.R. 36873, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to strengthen the economic base of our Nation, it is hereby ordered as follows:

1-1. PROCUREMENTS IN LABOR SURPLUS AREAS

1-101. Executive agencies shall emphasize procurement set-asides in labor surplus areas in order to strengthen our Nation's economy.

1-102. Labor surplus area procurements shall be consistent with this Order and, to the extent funds are available, the priorities of Section 15 of the Small Business Act, as amended by Public Law 95-89 (15 U.S.C. 644).

1-2. ADMINISTRATOR OF GENERAL SERVICES

1-201. The Administrator shall coordinate with and advise State and local officials with regard to Federal efforts to encourage procurements in labor surplus areas with the aim of fostering economic development in labor surplus areas.

1-202. The Administrator shall establish specific labor surplus area procurement targets for Executive agencies in consultation with the heads of those agencies.

1-203. In cooperation with the heads of Executive agencies, the Administrator shall encourage the use of set-asides or other appropriate methods for meeting procurement targets in labor surplus areas.

1-204. The Administrator shall report every six months to the President on the progress of the agencies in achieving the procurement targets.

1-3. AGENCY RESPONSIBILITIES

1-301. The Secretary of Labor shall classify and designate labor markets which are labor surplus areas. The Secretary shall provide labor market data to the heads of agencies and State and local officials in order to promote the development of business opportunities in labor surplus areas.

1-302. The heads of Executive agencies shall cooperate with the Administrator in carrying out his responsibilities for labor surplus area programs and shall provide the information necessary for setting procurement targets and recording achievement. They shall keep the Administrator informed of plans and programs which affect labor surplus procurements, with particular attention to opportunities for minority firms.

1-303. In accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), the Administrator for Federal Procurement Policy shall be responsible for the overall direction and oversight of the policies affecting procurement programs for labor surplus areas.

JIMMY CARTER.

EX. ORD. NO. 12092. PROHIBITION AGAINST INFLATIONARY PROCUREMENT PRACTICES

Ex. Ord. No. 12092, Nov. 1, 1978, 43 F.R. 51375, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces by the Constitution and statutes of the United States of America, including Sections 2(c) and 3(a) of the Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904 note) and Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)), and in order to encourage noninflationary pay and price behavior by private industry and labor, and to provide for the procurement by Executive agencies and Military Departments of personal property and services at prices and wage rates which are noninflationary, it is hereby ordered as follows:

1-101. The Chairman of the Council on Wage and Price Stability shall:

(a) Monitor company pay and price practices in order to determine compliance with the standards set forth in Section 1-102 of this Order;

(b) Promulgate regulations and guidance to further define these standards, and provide for appropriate exemptions and exceptions;

(c) Publish, or cause to be published, in accordance with procedures designed to ensure fairness and due process, the names of individuals or companies which are not in compliance with the standards;

(d) Promulgate procedures to be used in proceedings before the Council on matters pertaining to the standards, and take such other action as may be necessary and consistent with the purposes of this Section.

1-102. Noninflationary wage and price behavior shall be measured by the following standards:

(a) For prices, noninflationary price behavior is the deceleration by companies of their current rate of average price increase by at least 0.5 percentage points from their historical rate of annual price increase during 1976-1977 except where profits have not increased.

(b) For pay, noninflationary pay behavior is the holding of pay increases to not more than 7 percent annually above their recent historical levels.

(c) These standards, which shall be further defined by the Chairman of the Council on Wage and Price Stability, shall be subject to certain limitations and exemptions as determined by the Chairman.

1-103. In order to ensure economy and efficiency in government procurement, the head of each Executive agency and Military Department shall ensure that their contracts incorporate, on and after January 1, 1979, a clause which requires compliance by the contractor, and by his subcontractors and suppliers, with the standards set forth in Section 1-102 of this Order.

1-104. Each Executive agency and each Military Department shall comply with the directions of the Administrator for Federal Procurement Policy, who, in accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), shall be responsible for the overall direction of the implementation of Section 1-103 including the issuance of regulations and procedures for determining exceptions and granting exemptions.

JIMMY CARTER.

§ 405. Authority and functions of the Administrator

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission or the Chairman thereof

were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 405a. Uniform Federal procurement regulations and procedures

The Administrator of the Office of Federal Procurement Policy is authorized and directed, pursuant to the authority conferred by this chapter and subject to the procedures set forth in such chapter, to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies. In formulating such regulations and procedures the Administrator of the Office of Federal Procurement Policy shall, in consultation with the Small Business Administration, conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

(Pub. L. 95-507, title II, § 222, Oct. 24, 1978, 92 Stat. 1771.)

References in Text

"This chapter" and "such chapter", referred to in text, read in the original, "Public Law 93-400" and "such Public Law", respectively, which Public Law is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

Codification

Section was not enacted as part of the Office of Federal Procurement Policy Act, which comprises this chapter.

Definitions

The definitions in section 637c of Title 15, Commerce and Trade, apply to terms appearing in this section.

CHAPTER 8—FEDERAL GRANTS AND COOPERATIVE AGREEMENTS [NEW]

Sec.
501. Congressional findings and statement of purpose.
502. Definitions.
503. Use of procurement contracts by executive agencies.
504. Use of grant agreements by executive agencies.
505. Use of cooperative agreements by executive agencies.
506. Required and discretionary authorities.
507. Federal assistance program study; contents; consultations; report and recommendations.
508. Supplementary interpretative guidelines to promote required use of contracts, etc.
509. Use of multiple relationships for different components of jointly funded projects.

Chapter Referred to in Other Sections

This chapter is referred to in title 20 section 1221e.

§ 501. Congressional findings and statement of purposes

(a) The Congress finds that—

(1) there is a need to distinguish Federal assistance relationships from Federal procurement relationships and thereby to standardize usage and clarify the meaning of the legal instruments which reflect such relationships;

(2) uncertainty as to the meaning of such terms as "contract", "grant", and "cooperative agreement" and the relationships they reflect causes operational inconsistencies, confusion, inefficiency, and waste for recipients of awards as well as for executive agencies; and

(3) the Commission on Government Procurement has documented these findings and concluded that a reduction of the existing inconsistencies, confusion, inefficiency, and waste is feasible and necessary through legislative action.

(b) The purposes of this chapter are—

(1) to characterize the relationship between the Federal Government and contractors, State and local governments, and other recipients in the acquisition of property and services and in the furnishing of assistance by the Federal Government so as to promote a better understanding of Federal spending and help eliminate unnecessary administrative requirements on recipients of Federal awards;

(2) to establish Government-wide criteria for selection of appropriate legal instruments to achieve uniformity in the use by the executive agencies of such instruments, a clear definition of the relationships they reflect, and a better understanding of the responsibilities of the parties;

(3) to promote increased discipline in the selection and use of types of contract, grant agreement, and cooperative agreements and to maximize competition in the award of contracts and encourage competition, where deemed appropriate, in the award of grants and cooperative agreements; and

(4) to require a study of the relationship between the Federal Government and grantees and other recipients in Federal assistance programs and the feasibility of developing a comprehensive system of guideline for the use of grant and cooperative agreements, and other forms of Federal assistance in carrying out such programs.

(Pub. L. 95-224, § 2, Feb. 3, 1978, 92 Stat. 3.)

References in Text

This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub. L. 95-224, which enacted this chapter, repealed sections 1891 and 1892 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under this section and section 1891 of Title 42.

Short Title

Section 1 of Pub. L. 95-224 provided: "That this Act [which enacted this chapter, repealed sections 1891 and 1892 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under this section and section 1891 of Title 42] be cited as the 'Federal Grant and Cooperative Agreement Act of 1977'."

SAVINGS PROVISIONS

Section 10(b) of Pub. L. 95-224 provided that: "Nothing in this Act [see Short Title note above] shall be construed to render void or voidable any existing contract, grant, cooperative agreement, or other contract, grant, or cooperative agreement entered into up to one year after the date of enactment of this Act [Feb. 3, 1978]."

EXCEPTED TRANSACTIONS OR PROGRAMS; TERMINATION DATE OF AUTHORITY OF DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

Section 10(d) of Pub. L. 95-224 provided that: "The Director of the Office of Management and Budget may except individual transactions or programs of any executive agency from the application of the provisions of this Act [see Short Title note above]. This authority shall expire one year after receipt by the Congress of the study provided for in section 8 of this Act [section 507 of this title]."

§ 502. Definitions

As used in this chapter, the term—

(1) "State government" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State, and any multi-State, regional, or interstate entity which has governmental functions;

(2) "local government" means any unit of government within a State, a county, municipality, city, town, township, local public authority, special district, intrastate district, council of governments, sponsor group representative organization, other interstate government entity, or any other instrumentality of a local government;

(3) "other recipient" means any person or recipient other than a State or local government who is authorized to receive Federal assistance or procurement contracts and includes any charitable or educational institution;

(4) "executive agency" means any executive department as defined in section 101 of title 5, a military department as defined in section 102 of title 5, an independent establishment as defined in section 104 of title 5 (except that it shall not include the General Accounting Office), a wholly owned Government corporation; and

(5) "grant or cooperative agreement" does not include any agreement under which only direct Federal cash assistance to individuals, a subsidy, a loan, a loan guarantee, or insurance is provided.

(Pub. L. 95-224, § 3, Feb. 3, 1978, 92 Stat. 4.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 503. Use of procurement contracts by executive agencies

Each executive agency shall use a type of procurement contract as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient—

(1) whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate.

(Pub. L. 95-224, § 4, Feb. 3, 1978, 92 Stat. 4.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 504. Use of grant agreements by executive agencies

Each executive agency shall use a type of grant agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever—

(1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

(Pub. L. 95-224, § 5, Feb. 3, 1978, 92 Stat. 4.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 505. Use of cooperative agreements by executive agencies

Each executive agency shall use a type of cooperative agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever—

(1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

(Pub. L. 95-224, § 6, Feb. 3, 1978, 92 Stat. 5.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 506. Required and discretionary authorities

(a) Notwithstanding any other provision of law, each executive agency authorized by law to enter into contracts, grant or cooperative agreements, or similar arrangements is authorized and directed to enter into and use types of con-

tracts, grant agreements, or cooperative agreements as required by this chapter.

(b) The authority to make contracts, grants, and cooperative agreements for the conduct of basic or applied scientific research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research shall include discretionary authority, when it is deemed by the head of the executive agency to be in furtherance of the objectives of the agency, to vest in such institutions or organizations, without further obligation to the Government, or on such other terms and conditions as deemed appropriate, title to equipment or other tangible personal property purchased with such funds.

(Pub. L. 95-224, § 7, Feb. 3, 1978, 92 Stat. 5.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 507. Federal assistance program study; contents; consultations; report and recommendations

The Director of the Office of Management and Budget, in cooperation with the executive agencies, shall undertake a study to develop a better understanding of alternative means of implementing Federal assistance programs, and to determine the feasibility of developing a comprehensive system of guidance for Federal assistance programs. Such study shall include a thorough consideration of the findings and recommendations of the Commission on Government Procurement relating to the feasibility of developing such a system. The Director shall consult with and to the extent practicable, involve representatives of the executive agencies, the Congress, the General Accounting Office, and State and local governments, other recipients and other interested members of the public. The result of the study shall be reported to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate at the earliest practicable date, but in no event later than two years after February 3, 1978. The report on the study shall include (1) detailed descriptions of the alternative means of implementing Federal assistance programs and of the circumstances in which the use of each appears to be most desirable, (2) detailed descriptions of the basic characteristics and an outline of such comprehensive system of guidance for Federal assistance programs, the development of which may be determined feasible, and (3) recommendations concerning arrangements to proceed with the full development of such comprehensive system of guidance and for such administrative or statutory changes, including changes in the provisions of sections 502 through 506 of this title, as may be deemed appropriate on the basis of the findings of the study.

(Pub. L. 95-224, § 8, Feb. 3, 1978, 92 Stat. 5.)

§ 508. Supplementary interpretative guidelines to promote required use of contracts, etc.

The Director of the Office of Management and Budget is authorized to issue supplementary interpretative guidelines to promote consistent and efficient use of contract, grants agreement, and cooperative agreements as defined in this chapter.

(Pub. L. 95-224, § 9, Feb. 3, 1978, 92 Stat. 6.)

§ 509. Use of multiple relationships for different components of jointly funded projects

Nothing in this chapter shall require the establishment of a single relationship between the Federal Government and a State or local government or other recipient on a jointly funded project, involving funds from more than one program or appropriation where different relationships would otherwise be appropriate for different components of the project.

(Pub. L. 95-224, § 10(c), Feb. 3, 1978, 92 Stat. 6.)

CHAPTER 9—CONTRACT DISPUTES [NEW]

Sec.

601. Definitions.
602. Applicability of law.
(a) Executive agency contracts.
(b) Tennessee Valley Authority contracts.
(c) Foreign government or international organization contracts.
603. Maritime contracts.
604. Fraudulent claims.
605. Decision by contracting officer.
(a) Contractor claims.
(b) Review; performance of contract pending appeal.
(c) Amount of claim; certification; notification; time of issuance; presumption.
606. Contractor's right of appeal to board of contract appeals.
607. Agency boards of contracts appeals.
(a) Establishment; consultation; Tennessee Valley Authority.
(b) Appointment of members; chairman; compensation.
(c) Appeals; inter-agency arrangements.
(d) Jurisdiction.
(e) Decisions.
(f) Accelerated appeal disposition.
(g) Review.
(h) Procedural guidelines.
(i) Workload studies.
608. Small claims.
(a) Accelerated disposition of appeals.
(b) Simplified rules of procedure.
(c) Time of decision.
(d) Finality of decision.
(e) Effect of decision.
(f) Review of requisite amount in controversy.
609. Judicial review of board decisions.
(a) Actions in United States Court of Claims; district court actions; time for filing.
(b) Finality of board decision.
(c) Remand or retention of case.
(d) Consolidation.
(e) Judgments as to fewer than all claims.
610. Subpena, discovery, and deposition.
611. Interest.
612. Payment of claims.
(a) Judgments.
(b) Monetary awards.
(c) Reimbursement.
(d) Tennessee Valley Authority.
613. Separability of provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 5108; title 28 sections 1491, 2401, 2414, 2517.

§ 601. Definitions

As used in this chapter—

(1) the term "agency head" means the head and any assistant head of an executive agency, and may "upon the designation by" the head of an executive agency include the chief official of any principal division of the agency;

(2) the term "executive agency" means an executive department as defined in section 101 of title 5, an independent establishment as defined by section 104 of title 5 (except that it shall not include the General Accounting Office), a military department as defined by section 102 of title 5, and a wholly owned Government corporation as defined by section 846 of title 31, the United States Postal Service, and the Postal Rate Commission;

(3) The[1] term "contracting officer" means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of his authority;

(4) the term "contractor" means a party to a Government contract other than the Government;

(5) The[1] term "Administrator" means the Administrator for Federal Procurement Policy appointed pursuant to the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.];

(6) The[1] term "agency board" means an agency board of contract appeals established under section 607 of this title; and

(7) The[1] term "misrepresentation of fact" means a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(Pub. L. 95–563, § 2, Nov. 1, 1978, 92 Stat. 2383.)

REFERENCES IN TEXT

This chapter, referred to in text preceding par. (1), read in the original "this Act", meaning Pub. L. 95–563, which enacted this chapter, amended section 5108 of Title 5, Government Organization and Employees, section 1346, 1491, 2401, 2414, 2510, and 2517 of Title 28, Judiciary and Judicial Procedure, and section 724a of Title 31, Money and Finance, and enacted provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Office of Federal Procurement Policy Act, referred to in par. (5), is Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, which is classified principally to chapter 7 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

EFFECTIVE DATE

Section 16 of Pub. L. 95–563 provided that: "This Act [see Short Title note below] shall apply to contracts entered into one hundred twenty days after the date of enactment [Nov. 1, 1978]. Notwithstanding any provision in a contract made before the effective date of this Act, the contractor may elect to proceed under this Act with respect to any claim pending then before the contracting officer or initiated thereafter."

SHORT TITLE

Section 1 of Pub. L. 95–563 provided: "That this Act [enacting this chapter, amending section 5108 of Title 5, Government Organization and Employees, sections 1346, 1491, 2401, 2414, 2510, and 2517 of Title 28, Judiciary and Judicial Procedure, and section 724a of Title 31, Money and Finance, and enacting provisions set out as notes under this section] may be cited as the 'Contract Disputes Act of 1978'."

§ 602. Applicability of law

(a) Executive agency contracts

Unless otherwise specifically provided herein, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) entered into by an executive agency for—

(1) the procurement of property, other than real property in being;

(2) the procurement of services;

(3) the procurement of construction, alteration, repair or maintenance of real property; or,

(4) the disposal of personal property.

(b) Tennessee Valley Authority contracts

With respect to contracts of the Tennessee Valley Authority, the provisions of this chapter shall apply only to those contracts which contain a disputes clause requiring that a contract dispute be resolved through an agency administrative process. Notwithstanding any other provision of this chapter, contracts of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system shall be excluded from the chapter.

(c) Foreign government or international organization contracts

This chapter does not apply to a contract with a foreign government, or agency thereof, or international organization, or subsidiary body thereof, if the head of the agency determines that the application of the chapter to the contract would not be in the public interest.

(Pub. L. 95–563, § 3, Nov. 1, 1978, 92 Stat. 2383.)

§ 603. Maritime contracts

Appeals under paragraph (g) of section 607 of this title and suits under section 609 of this title, arising out of maritime contracts, shall be governed by chapter 20 or 22 of title 46 as applicable, to the extent that those chapters are not inconsistent with this chapter.

(Pub. L. 95–563, § 4, Nov. 1, 1978, 92 Stat. 2384.)

REFERENCES IN TEXT

Chapter 20 of title 46, referred to in text, was in the original a reference to the Act of Mar. 9, 1920 (41 Stat. 525, as amended), known as the Suits in Admiralty Act, which is classified generally to chapter 20 (§ 741 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 741 of Title 46 and Tables.

Chapter 22 of title 46, referred to in text, was in the original a reference to the Act of Mar. 3, 1925 (43 Stat.

[1] So in original. Probably should not be capitalized.

1112, as amended), known as the Public Vessels Act, which is classified generally to chapter 22 (§ 781 et seq.) of Title 46 Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46 and Tables.

§ 604. Fraudulent claims

If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim. Liability under this subsection[1] shall be determined within six years of the commission of such misrepresentation of fact or fraud.

(Pub. L. 95-563, § 5, Nov. 1, 1978, 92 Stat. 2384.)

§ 605. Decision by contracting officer

(a) Contractor claims

All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this chapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(b) Review; performance of contract pending appeal

The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter. Nothing in this chapter shall prohibit executive agencies from including a clause in government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(c) Amount of claim; certification; notification; time of issuance; presumption

(1) A contracting officer shall issue a decision on any submitted claim of $50,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered within that period. For claims of more than $50,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable.

(2) A contracting officer shall, within sixty days of receipt of a submitted certified claim over $50,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations promulgated by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(4) A contractor may request the agency board of contract appeals to direct a contracting officer to issue a decision in a specified period of time, as determined by the board, in the event of undue delay on the part of the contracting officer.

(5) Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of the appeal or suit on the claim as otherwise provided in this chapter. However, in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer, the tribunal concerned may, at its option, stay the proceedings to obtain a decision on the claim by the contracting officer.

(Pub. L. 95-563, § 6, Nov. 1, 1978, 92 Stat. 2384.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 606, 609, 611 of this title.

§ 606. Contractor's right of appeal to board of contract appeals

Within ninety days from the date of receipt of a contracting officer's decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.

(Pub. L. 95-563, § 7, Nov. 1, 1978, 92 Stat. 2385.)

§ 607. Agency boards of contracts appeals

(a) Establishment; consultation; Tennessee Valley Authority

(1) Except as provided in paragraph (2) an agency board of contract appeals may be established within an executive agency when the agency head, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least three members who shall have no other inconsistent duties. Workload studies will be updated at least once every three years and submitted to the Administrator.

(2) The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals for the Authority of an indeterminate number of members.

[1] So in original. Probably should read "section".

(b) Appointment of members; chairman; compensation

(1) Except as provided in paragraph (2), the members of agency boards shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law. Full-time members of agency boards serving as such on the effective date of this chapter shall be considered qualified. The chairman and vice chairman of each board shall be designated by the agency head from members so appointed. The chairman of each agency board shall receive compensation at a rate equal to that paid a GS–18 under the General Schedule contained in section 5332, of title 5, the vice chairman shall receive compensation at a rate equal to that paid a GS–17 under such General Schedule, and all other members shall receive compensation at a rate equal to that paid a GS–16 under such General Schedule. Such positions shall be in addition to the number of positions which may be placed in GS–16, GS–17, and GS–18 of such General Schedule under existing law.

(2) The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to its agency board of contract appeals established in subsection (a)(2) of this section, and shall designate a chairman of such board. The chairman of such board shall receive compensation at a rate equal to the daily rate paid a GS–18 under the General Schedule contained in section 5332, of title 5, for each day he is engaged in the actual performance of his duties as a member of such board. All other members of such board shall receive compensation at a rate equal to the daily rate paid a GS–16 under such General Schedule for each day they are engaged in the actual performance of their duties as members of such board.

(c) Appeals; inter-agency arrangements

If the volume of contract claims is not sufficient to justify an agency board under subsection (a) of this section or if he otherwise considers it appropriate, any agency head shall arrange for appeals from decisions by contracting officers of his agency to be decided by a board of contract appeals of another executive agency. In the event an agency head is unable to make such an arrangement with another agency, he shall submit the case to the Administrator for placement with an agency board. The provisions of this subsection shall not apply to the Tennessee Valley Authority.

(d) Jurisdiction

Each agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relative to a contract made by its agency, and (2) relative to a contract made by any other agency when such agency or the Administrator has designated the agency board to decide the appeal. In exercising this jurisdiction, the agency board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims.

(e) Decisions

An agency board shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, and shall issue a decision in writing or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

(f) Accelerated appeal disposition

The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is $50,000 or less. The accelerated procedure shall be applicable at the sole election of only the contractor. Appeals under the accelerated procedure shall be resolved, whenever possible, within one hundred and eighty days from the date the contractor elects to utilize such procedure.

(g) Review

(1) The decision of an agency board of contract appeals shall be final, except that—

(A) a contractor may appeal such a decision to the Court of Claims within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the United States Court of Claims for judicial review, under section 2510 of title 28, within one hundred and twenty days from the date of the agency's receipt of a copy of the board's decision.

(2) Notwithstanding the provisions of paragraph (1), the decision of the board of contract appeals of the Tennessee Valley Authority shall be final, except that—

(A) a contractor may appeal such a decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) The Tennessee Valley Authority may appeal the decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of the decision in any case.

(h) Procedural guidelines

Pursuant to the authority conferred under the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.], the Administrator is authorized and directed, as may be necessary or desirable to carry out the provisions of this chapter, to issue guidelines with respect to criteria for the establishment, functions, and procedures of the agency boards (except for a board established by the Tennessee Valley Authority).

(i) Workload studies

Within one hundred and twenty days from November 1, 1978, all agency boards, except that of the Tennessee Valley Authority, of three or more full time members shall develop workload studies for approval by the agency head as specified in subsection (a)(1) of this section.

(Pub. L. 95–563, § 8, Nov. 1, 1978, 92 Stat. 2385.)

REFERENCES IN TEXT

For the effective date of this chapter, referred to in subsec. (b)(1), see section 16 of Pub. L. 95-563, set out as a note under section 601 of this title.

The Office of Federal Procurement Policy Act, referred to in subsec. (h), is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, which is classified principally to chapter 7 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

In subsec. (b)(1), "administrative law judges" was substituted for "hearing examiners" on authority of section 3 of Pub. L. 95-251, Mar. 27, 1978, 92 Stat. 184, which is set out as a note under section 3105 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603, 606, 609 of this title; title 28 section 1346.

§ 608. Small claims

(a) Accelerated disposition of appeals

The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is $10,000 or less. The small claims procedure shall be applicable at the sole election of the contractor.

(b) Simplified rules of procedure

The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal thereunder. Such appeals may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(c) Time of decision

Appeals under the small claims procedure shall be resolved, whenever possible, within one hundred twenty days from the date on which the contractor elects to utilize such procedure.

(d) Finality of decision

A decision against the Government or the contractor reached under the small claims procedure shall be final and conclusive and shall not be set aside except in cases of fraud.

(e) Effect of decision

Administrative determinations and final decisions under this section shall have no value as precedent for future cases under this chapter.

(f) Review of requisite amount in controversy

The Administrator is authorized to review at least every three years, beginning with the third year after November 1, 1978, the dollar amount defined in subsection (a) of this section as a small claim, and based upon economic indexes selected by the Administrator adjust that level accordingly.

(Pub. L. 95-563, § 9, Nov. 1, 1978, 92 Stat. 2387.)

§ 609. Judicial review of board decisions

(a) Actions in United States Court of Claims; district court actions; time for filing

(1) Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 605 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a United States district court pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Any action under paragraph (1) or (2) shall be filed within twelve months from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court.

(b) Finality of board decision

In the event of an appeal by a contractor or the Government from a decision of any agency board pursuant to section 607 of this title, notwithstanding any contract provision, regulation, or rules of law to the contrary, the decision of the agency board on any question of law shall not be final or conclusive, but the decision on any question of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence.

(c) Remand or retention of case

In any appeal by a contractor or the Government from a decision of an agency board pursuant to section 607 of this title, the court may render an opinion and judgement and remand the case for further action by the agency board or by the executive agency as appropriate, with such direction as the court considers just and proper, or, in its discretion and in lieu of remand it may retain the case and take such additional evidence or action as may be necessary for final disposition of the case.

(d) Consolidation

If two or more suits arising from one contract are filed in the Court of Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the Court of Claims may order the consolidation of such suits in that court or transfer any suits to or among the agency boards involved.

(e) Judgments as to fewer than all claims

In any suit filed pursuant to this chapter involving two or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one such claim can be divided for purposes of decision or judgment, and in any such suit where multiple parties are involved, the court, whenever such action is appropriate, may enter a judgment as to one or more but fewer than all of the claims, portions thereof, or parties.

(Pub. L. 95-563, § 10, Nov. 1, 1978, 92 Stat. 2388.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 603 of this title; title 28 sections 1346, 2510.

§ 610. Subpena, discovery, and deposition

A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board. In case of contumacy or refusal to obey a subpena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the court, upon application of the agency board through the Attorney General; or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to issue the person an order requiring him to appear before the agency board or a member thereof, to produce evidence or to give testimony, or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

(Pub. L. 95–563, § 11, Nov. 1, 1978, 92 Stat. 2388.)

§ 611. Interest

Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 605(a) of this title from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board.

(Pub. L. 95–563, § 12, Nov. 1, 1978, 92 Stat. 2389.)

REFERENCES IN TEXT

Provisions of Public Law 92–41, referred to in text, which authorized the Secretary of the Treasury to fix interest rates for the Renegotiation Board, were contained in section 2(a)(3) of Pub. L. 92–41, which is classified to section 1215(b)(2) of Title 50, Appendix, War and National Defense.

§ 612. Payment of claims

(a) Judgments

Any judgment against the United States on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 724a of title 31.

(b) Monetary awards

Any monetary award to a contractor by an agency board of contract appeals shall be paid promptly in accordance with the procedures contained in subsection (a) of this section.

(c) Reimbursement

Payments made pursuant to subsections (a) and (b) of this section shall be reimbursed to the fund provided by section 724a of title 31 by the agency whose appropriations were used for the contract out of available funds or by obtaining additional appropriations for such purposes.

(d) Tennessee Valley Authority

(1) Notwithstanding the provisions of subsection (a) through (c) of this section, any judgment against the Tennessee Valley Authority on a claim under this chapter shall be paid promptly in accordance with the provisions of section 831h(b) of title 16.

(2) Notwithstanding the provisions of subsection (a) through (c), any monetary award to a contractor by the board of contract appeals for the Tennessee Valley Authority shall be paid in accordance with the provisions of section 831h(b) of title 16.

(Pub. L. 95–563, § 13, Nov. 1, 1978, 92 Stat. 2389.)

§ 613. Separability of provisions

If any provision of this chapter, or the application of such provision to any persons or circumstances, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 95–563, § 15, Nov. 1, 1978, 92 Stat. 2391.)